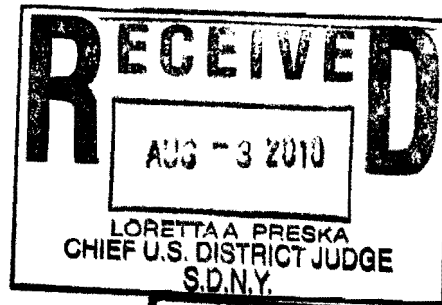


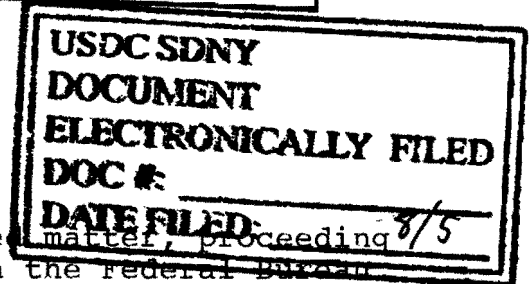
July 28, 2010

BY US MAIL

United States District Court
Southern District of New York
Chief Judge Loretta A. Preska
500 Pearl Street
New York, New York 10007



R.E. Donald Roth v. United States
09 Civ. 8712, S7 02 Cr. 1503 (SCR) (LMS)



Dear Chief Judge Preska,

I am the petitioner in the above-entitled matter, proceeding pro se, In Forma Pauperis and incarcerated in the Federal Bureau of Prisons. I wrote to you in January 2010 about Judge Robinson's failure to rule on several pending motions in this matter, to which you replied that the White Plains Clerk of the Court, Robert Rogers, advised you that all motions in the matter were either pending or disposed of.

I write as a result of two developments in this matter, which I was advised of in the past day, that I request your involvement in as Chief Judge. One, the government filed a letter-request with Magistrate Judge Smith July 21, 2010 (received by me yesterday) requesting an additional sixty days to file their response, enclosed. Two, I was advised, also yesterday, that District Court Judge Stephen C. Robinson resigned from the federal bench, effective August 13, 2010.

As set forth in my July 27, 2010 letter to Judge Robinson, enclosed, both of my previously filed motions for release pending disposition of the \$2255 motion (filed as early as December 2009) remain pending. The government has now, again, sought an unnecessary and unjustified delay in these proceedings. I have already served twenty-five months of the sixty month sentence, which means that I will due to be released in May 2012, with good-time credit and the average allotment of half-way house (six months), if not sooner with Second Chance Act consideration.

Please reassign this matter to a District Judge in New York City, as opposed to White Plains since former AUSA Judge Seibel is the only other District Judge in White Plains, and request that the Court entertain my previously filed motions for release. It should be noted that I was released pending trial and appeal in this matter, between September 3, 2003 and July 21, 2008, voluntarily surrendering to the Federal Bureau of Prisons, with the government stating at the hearing to release me pending appeal that I was neither a risk of flight or danger to the community, held February 12, 2004. There are family and friends willing to post bond and act as FRP's on my behalf. The issue presented in my motion is substantial in the sense that it is at least a "close call" which if resolved in my favor would result in a new trial, reversal or spending more time in prison than the length of the \$2255 process.

The \$2255 motion has been pending since October 5, 2009, with the government's knowledge of the subject matter since March 2009 (FOIA request to the ATF&E).

In response to the government's first request for a delay in the proceeding, made by letter to Magistrate Judge Smith December 21, 2009, the matter was needlessly delayed for months. The government specifically stated in that letter that they "did not take a position" on any of my other pending motions, that is the motion for release. Still, Judge Robinson refused to rule on the motion.

The government also had actual knowledge of the issue raised in my \$2255 motion in July 2009 when I filed a motion for production of documents with Judge Robinson, prior to filing the \$2255 motion, which specifically stated that I planned on raising the issue of the government's bad-faith suppression of certain Brady/Giglio information, in addition to the possible knowing introduction of perjurious testimony at jury trial.


With a new judge assigned to this matter, the delays will be even longer, as he or she reviews the record and prior filings by the parties. This is through no fault of mine.

I respectfully request that you issue an order in which:

- The matter is reassigned to a new District/Magistrate Judge in New York City;
- The new District Judge is directed to hold a hearing on my previously filed motions for release;
- and any other relief Your Honor deems fit and just.

Thank you for your consideration.

Respectfully submitted,

By: 
FCI Sandstone
Donald Roth, 83933-054 K1
POB 1000
Sandstone, MN 55072


cc. Hon. Stephen C. Robinson
Hon. Lisa Margaret Smith
Benjamin Allee, Esq.
(all by mail)

The matter will be reassigned in due course, but the Chief Judge may not order another judge to hold a hearing. In any event, the matter continues to be assigned to Magistrate Judge Smith.

August 3, 2010

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SO ORDERED


LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE